



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178

www.deq.virginia.gov

Andrew R. Wheeler
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

Guidance Memorandum

Subject: GM22-2007 Board Guidance Document: Resource Protection Area- Onsite Buffer Area Delineation
To: DEQ Division of Water Planning Staff
From: Jutta Schneider, Water Planning Division Director *Jutta Schneider*
Date: February 3, 2022
Copies: Director of Central Operations, Director of Regional Operations, Water Permitting Division Director, Enforcement Division Director, Regional Directors, Deputy Regional Directors

Summary: As a result of actions by the 2013 General Assembly, certain water quality programs previously administered by the Virginia Department of Conservation and Recreation (DCR) are now administered by the Department of Environmental Quality (DEQ). The following guidance document associated with the implementation of the Chesapeake Bay Preservation Act and the Chesapeake Bay Preservation Area Designation and Management Regulations has been updated solely to correct typographical errors and update website links, to reflect the change in program administration from DCR to DEQ, and to reflect current regulatory and statutory authorities (Va. Code §62.1-44.15:67 et seq. and 9VAC25-830 et seq.), and does not include substantive updates or revisions.

New Guidance Number and Title	Replaces Previous Guidance Number and Title
GM22-2007 Board Guidance Document: Resource Protection Areas: Permitted Development Activities	DCR-CBLAB-020 Board Guidance Document: Resource Protection Areas: Permitted Development Activities

Electronic Copy:

Once effective, an electronic copy of this guidance will be available on:

- The Virginia Regulatory Town Hall under the Department of Environmental Quality (<https://townhall.virginia.gov/l/gdocs.cfm?agencynumber=440>);
- The Department’s website at: <https://www.deq.virginia.gov/water/chesapeake-bay/chesapeake-bay-preservation-act/local-program-regulations-guidance>

Contact Information:

Please contact Justin Williams, Director, Office of Watersheds and Local Government Assistance Programs, (804) 659-1125, Justin.Williams@deq.virginia.gov with any questions regarding the application of this guidance.

Certification:

As required by Subsection B of [§ 2.2-4002.1](#) of the APA, the agency certifies that this guidance document conforms to the definition of a guidance document in [§ 2.2-4101](#) of the Code of Virginia.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate or prohibit any particular action not otherwise required or prohibited by law or regulation. If alternative proposals are made, such proposals will be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

Effective Date: 3-31-2022

Initials: JW



Resource Protection Areas: Permitted Development Activities

Guidance on the Chesapeake Bay Preservation Area Designation and Management Regulations

Revised September 19, 2005, June 15, 2009; June 21, 2010, February 2022

Purpose:

This document provides guidance on those sections of the Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations) related to development and redevelopment activities permitted within Resource Protection Areas (RPAs) and those activities that are otherwise exempt from the Regulations.

Regulations:

- Section 9 VAC 25-830-140 sets out the performance criteria for Resource Protection Areas (RPAs), and permits the following uses by right: water dependent uses; redevelopment as defined by the Regulations; development or redevelopment within a designated Intensely Developed Area (IDA); a new use established on a nonconforming lot; a street or driveway crossing approved by the locality pursuant to the Regulations; or a flood control or stormwater management facility serving multiple development projects or a significant portion of a watershed, consistent with certain conditions.
- Section 9 VAC 25-830-140(1)(a) requires a Water Quality Impact Assessment to be submitted for any land disturbing activity within an RPA, including the buffer component.
- Section 9 VAC 25-830-140(1)(b) sets out the criteria that must be met for new or expanded water dependent facilities to be allowed in the RPA. These criteria include the following: that it does not conflict with the local comprehensive plan; that it complies with all performance criteria; that any non-water dependent component is located outside of the RPA; and; that access is provided with the minimum disturbance necessary.
- Section 9 VAC 25-830-140(1)(c) requires stormwater management and erosion and sediment control requirements to be applied for redevelopment activities both within and outside of IDAs, and also contains criteria for no net increase of imperviousness and no further encroachment into the RPA.
- Section 9 VAC 25-830-150 (B) exempts the construction of public utilities, railroads, public roads and appurtenant facilities from the Regulations, consistent with certain conditions.

Discussion:

Water Dependent Facilities

Certain uses are permitted by-right within the RPA. Water dependent facilities, i.e., facilities that by their very nature require that they be located adjacent to the water, are among these facilities. Some examples of water dependent facilities that are permitted to be located within the RPA include the water dependent portion of marinas, aquacultural facilities that require fresh flows of water, beaches, docks and piers as well as stream and wetland restoration projects that have been permitted by state and federal agencies such as DEQ and USCOE.

Development of these facilities requires that a Water Quality Impact Assessment (WQIA) be submitted for review and approval prior to beginning construction activity and that the conditions in 9 VAC 25-830-140(1)(b) be satisfied.

Redevelopment Within RPAs That Are Not IDAs

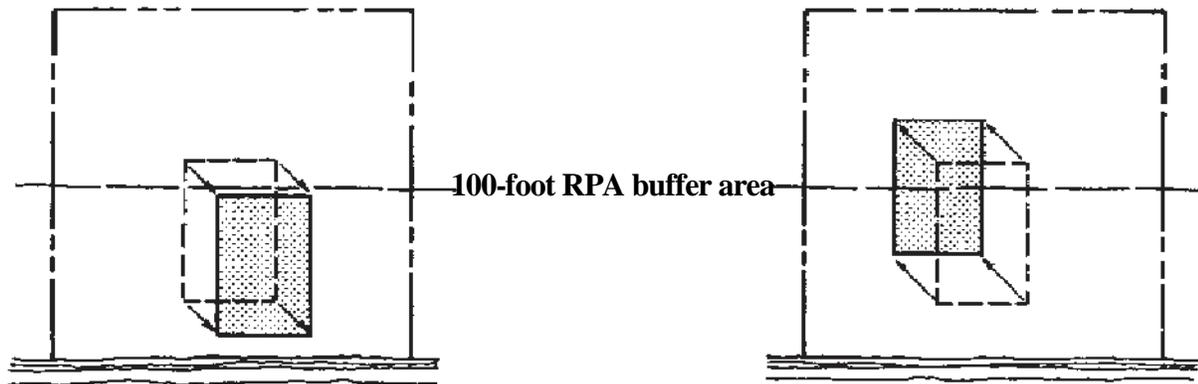
Redevelopment activities are also permitted to occur within the RPA. **A Water Quality Impact Assessment must be reviewed and approved before development activities may begin.** The *Chesapeake Bay Preservation Area Designation and Management Regulations* define **redevelopment** to mean “the process of developing land that has previously been developed.” Under the traditional view of redevelopment, old, dilapidated, or outdated structures and impervious areas are demolished or removed and reconstructed.

The intent of the Regulations is to allow redevelopment within RPAs so that areas where existing development is concentrated may be renovated while improving the quality of stormwater runoff. If redevelopment increases the amount of impervious surface in the RPA, or reduces the width of an existing buffer area, water quality degradation may occur. The definition of redevelopment, then, generally dictates that redevelopment occur in approximately the same physical location as the previous development. This is a particularly important point when considering sites where the previous development occurred only on a portion of a site. Placing structures outside of the RPA, even on redevelopment sites, should be encouraged. For the purposes of the Bay Act program, the following conditions must be present in order for a project to be considered “redevelopment:”

- The lot or parcel has been previously developed;
- The new structures and/or impervious areas are approximately in the same physical location as the previously existing structures and/or impervious areas;
- The proposed amount of impervious surface is no greater than the original development;
- RPA features are not further encroached upon.

For the purposes of the Bay Act program, redevelopment is **not defined as follows:**

Figure 1 - No Further Expansion into RPA



NOT ACCEPTABLE AS REDEVELOPMENT
The redevelopment encroaches further into the RPA (100-foot buffer component)

ACCEPTABLE AS REDEVELOPMENT
The redevelopment reduces the encroachment into the RPA (100-foot buffer component)

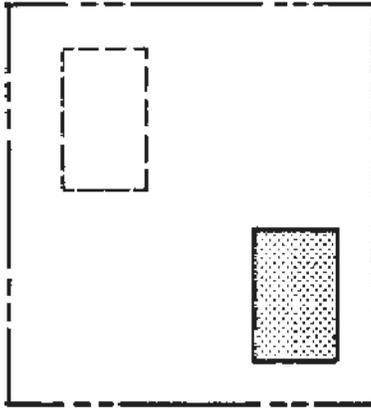
Figure 2 - No-Increase of Impervious Surface in RPA



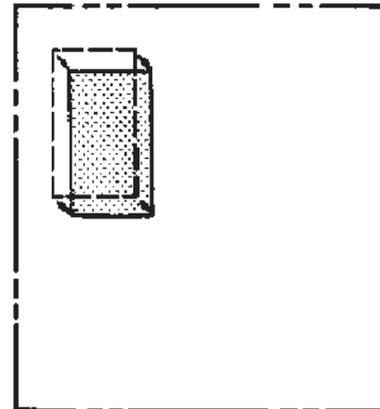
NOT ACCEPTABLE AS REDEVELOPMENT
The redevelopment is increasing the amount of impervious surface in the RPA.

ACCEPTABLE AS REDEVELOPMENT
The redevelopment is not increasing the amount of impervious surface in the RPA.

Figure 3 - Redevelopment in Same General Location



NOT ACCEPTABLE AS REDEVELOPMENT
The redevelopment is not in the same general location as the existing development



ACCEPTABLE AS REDEVELOPMENT
The redevelopment is in the same general location as the existing development

- **New construction** on a previously undeveloped parcel;
- **Additions or expansions** to existing structures
- **Replacement** of a structure lost by casualty. (However, it is possible that other local ordinances may allow the replacement of such structures.)
- **Relocation** of an existing structure to a previously undeveloped portion of a site.

Development or Redevelopment within an Intensely Developed Area

Intensely Developed Areas (IDAs) are redevelopment areas, identified by a local government and approved by the Chesapeake Bay Local Assistance Board, that meet the criteria found in 9 VAC 25-830-100(B). Development or redevelopment within IDAs is permitted provided that it conforms to applicable erosion and sediment control and stormwater management requirements. A WQIA must be submitted for land disturbance within the RPA portion of an IDA overlay.

Development on a Nonconforming Lot of Record

Nonconforming lots [i.e., lots that either (1) were approved by the locality and recorded before October 1, 1989 and that do not have sufficient land outside of the RPA on which to construct a principal dwelling, or (2) lots with insufficient land area outside the full 100 foot RPA that were recorded between October 1, 1989 and March 1, 2002 in those localities that had buffer equivalency language written into their local Chesapeake Bay Preservation Ordinances] may be improved with a principal structure and necessary utilities within the landward 50 feet of the RPA buffer provided that certain requirements are met. For guidance on development on nonconforming lots of record, please refer to the guidance entitled *Nonconforming Structures and Uses* and *Resource Protection Area: Buffer Area Encroachments*, posted on the Department's web site.

Stormwater or Flood Control Facilities

Flood control and stormwater management facilities that drain or treat water from multiple development projects may be permitted in the RPA provided that certain criteria are met. Consistent with 9 VAC 25-830 140(1)(e)(iii) of the Regulations, the local government must first develop a regional stormwater management program that is consistent with the water quality protection provisions of the *Virginia Stormwater Management Regulations* (9 VAC 25-870 *et seq.*) This local program must then be reviewed and approved as a Phase I program modification by the Department. The local government must establish through an analysis of a Water Quality Impact Assessment that the location of the facility within the RPA is the optimum location and that the size of the facility is the minimum necessary to provide flood control, stormwater treatment, or both. All applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies (such as the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission), and continued maintenance of the facility is required to assure that the facility continues to function as designed. For a more detailed discussion of the stormwater management requirements contained within the Chesapeake Bay Designation and Management Regulations, please refer to the *Stormwater Management Requirements* guidance, posted on the Department's web site.

Exemptions

Water wells, passive recreation sites (e.g., trails, paths, and other linear, minimally intrusive uses, but not ball fields and similar facilities), and historic or archeological sites are all permitted within the Resource Protection Area provided that the development of such sites is reviewed and approved by the local government, and any land disturbance in excess of 2,500 square feet complies with the erosion and sediment control requirements. Public utilities (including electric lines, natural gas lines, fiber-optic cables, and telephone transmission lines), public roads, railroads, and structures customarily accessory to these uses are permitted within the RPA provided that minimal criteria are met. These exemptions are based on

the premise that the agencies responsible for their construction have water quality protection requirements equal in effectiveness to the Chesapeake Bay Preservation Act Regulations. The installation of these facilities must conform to both the Erosion and Sediment Control Law (§62.1-44.15:51 *et seq.* of the Code of Virginia) and the Stormwater

Management Act (§62.1-44.15.15:68 *et seq.* of the Code of Virginia) and must be constructed according to an erosion and sediment control plan and a stormwater management plan approved by the Department of Environmental Quality. The construction of public roads is further conditioned on the minimization of the encroachment into the RPA and a minimization of water quality impacts.

The construction, installation, and maintenance of water, sewer, natural gas, underground telecommunication and cable television lines owned or permitted by a local government or regional service authority is permitted within the RPA provided that the encroachment is the minimum necessary, no more land is disturbed than is necessary to accommodate the installation, all applicable state and federal permits for the installation are obtained, the installation takes place in a manner that protects water quality, and any land disturbance exceeding an area of 2,500 square feet complies with the erosion and sediment control requirements contained in the Regulations.

Conclusions:

- Water dependent facilities are permitted by right within the RPA. They must conform to erosion and sediment control requirements, must (1) be constructed according to an approved Plan of development, (2) be justified through a Water Quality Impact Assessment, and (3) meet other conditions of 9 VAC 25-830-140(1)(b).
- Redevelopment activities are permitted within the RPA, provided that a Water Quality Impact Assessment (WQIA) is reviewed and approved, a Plan of Development is followed and the project complies with applicable erosion and sediment control and stormwater management requirements.
- Encroachments into the landward 50 foot portion of the RPA buffer are permitted by-right on lots recorded prior to October 1, 1989 **only when there is not sufficient land area outside the buffer for the principal structure and the required utilities**. A Water Quality Impact Assessment must show that the encroachment is the minimum necessary to afford relief, and, where practicable, a vegetated area equal in size to the encroachment and equal in ability to provide water quality benefits must be established elsewhere on the site.
- Encroachments into the landward 50 foot portion of the RPA buffer are permitted by-right on lots recorded between October 1, 1989 and March 1, 2002 **in those localities whose Chesapeake Bay Preservation Ordinances contained buffer equivalency language**, provided that the lot was legally created, that any conditions or mitigation required by a previous exception are met, and that any previously required Best Management Practices (BMPs) are functioning effectively (and will be reestablished or repaired if required). These criteria are in addition to the two criteria required for pre-1989 lots described above.

- Flood control and stormwater management facilities that drain or treat water from multiple development projects may be permitted in the RPA provided that they are part of a local regional stormwater management program that has been reviewed and approved as a Phase 1 program modification by the ~~Chesapeake Bay Local Assistance Board~~ Department and is consistent with the water quality protection provisions of the *Virginia Stormwater Management Regulations (9 VAC 25-870 et seq.)*. Public utilities, public roads, railroads, and structures accessory to these uses are permitted within the RPA provided that the installation conforms to both the Erosion and Sediment Control Law (§62.1-44.15:51 *et seq.* of the Code of Virginia) and the Stormwater Management Act (§62.1-44.14:68 *et seq.* of the Code of Virginia) and the facilities are constructed according to an erosion and sediment control plan and a stormwater management plan approved by the Department of Conservation and Recreation. The construction of public roads is further conditioned on the minimization of the encroachment into the RPA and a minimization of water quality impacts.
- Certain public utilities may be located within the RPA provided that specific conditions are met.
- The General Performance Criteria apply to **any** development occurring within a Chesapeake Bay Preservation Area, including exempted activities and uses that are permitted by right. Localities are to insure compliance with the criteria through a review of a Water Quality Impact Assessment, which are is required for **all** development activities (excluding exempted uses) within a RPA